IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.319 of 2000

Date of decision : August 24, 2007

State of H.P. **…Appellant.**

Versus

Udmi Ram and another **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting? No

For the Appellant : Mr. D.S. Nainta, Deputy Advocate General.

For the Respondents : Mr. Raman Sethi, Advocate.

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Respondents were sent up for trial for allegedly giving beatings to Jonsar Ram and Suresh Kumar resulting in simple as well grievous injuries to Jonsar Ram and simple injuries to Suresh Kumar. Both the injured were got medically examined by the police during the investigation of the case. The doctor noticed injuries on their persons, including a grievous injury on the person of Jonsar Ram.

3. Prosecution produced the injured, the doctor and one more witness Prem Dass (PW-5), who reached the spot on hearing cries, to substantiate its case. Trial Court, without appreciating the evidence of the injured, the eye witness and the doctor, who conducted the medico legal examination, has acquitted the respondents with the observations that there was delay of 3-4 days in lodging the FIR, there was enmity between the parties and in the FIR four persons were

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Whether reporters of the local papers may be allowed to see the judgment?

named as accused, but only two of them had been challaned and the possibility that the other two caused the injuries, could not be ruled out.

4. The aforesaid observations by themselves are not sufficient for recording the order of acquittal. Delay in lodging the FIR in itself is no ground for acquitting a criminal. Delay becomes relevant and assumes significance if there are some other infirmities or flaws in the prosecution case. Similarly, enmity between the parties can also not be a ground for acquittal, especially when there are injuries, including a grievous injury, on the persons of the injured. As a matter of fact, enmity is a double edged weapon, which at times, serves as motive for the commission of the offence and, therefore, can be used even against the accused as a circumstance.

5. The third reason, that the other two persons named in the FIR might have caused injuries, was required to be examined in the light of the provisions of section 34 of the Indian Penal Code. The evidence on record, in the form of the testimony of the two injured and an independent witness, suggested that the present respondents were among the assailants and the charge against them was also framed under Section 323 and 325 read with Section 34 I.P.C.

6. As a result of the above stated position, the impugned judgment is set aside and the case is remanded to the trial Court with the direction to decide it afresh after rehearing the parties and appreciation of evidence in the light of the observations made hereinabove as also in accordance with law, as applicable in the facts of the case.

August 24, 2007(ss) **(Surjit Singh), J**